

See-Mor Cable T.V. of Sikeston, Inc. and Teamsters Local Union No. 574, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 14-CA-13212

April 13, 1981

DECISION AND ORDER

On September 26, 1980, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, See-Mor Cable T.V. of Sikeston, Inc., Sikeston, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT discharge or otherwise discriminate against employees in regard to hire, tenure of employment, or any term or condition of employment because they engage in union or other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer to W. C. Eckles, Greg Rick, Kevin Goetz, and William Lambert full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered, with interest.

**SEE-MOR CABLE T.V. OF SIKESTON,
INC.**

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This proceeding involves allegations that See-Mor Cable T.V. of Sikeston, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the Act.¹ The charge was filed November 21, 1979,² by the Teamsters Local Union No. 574, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union. The complaint issued December 20, the answer was filed December 28, and the hearing was held January 28, 1980.

Upon the entire record, including my observation of the witnesses, and after consideration of General Counsel's brief, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Missouri corporation with its principal office and place of business in the city of Sikeston in the State of Missouri, is engaged in the installation, operation and servicing of a community area cable television system. During the 12-month period ending November 30, 1979, Respondent, in the course and conduct of its

¹ General Counsel's motion at the hearing to strike certain allegations from the complaint was granted.

² All dates are in 1979, unless otherwise specified.

business operations derived gross revenue in excess of \$100,000, and received and caused to be transmitted interstate communications signals. During the same period, Respondent purchased and caused to be transported and delivered at its Skeston, Missouri, facility, cable television cables, broadcasting equipment, and other goods and materials valued in excess of \$5,000,³ which were received directly from points located outside the State of Missouri. Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.⁴

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) the Act.

III. THE UNFAIR LABOR PRACTICES

A. Union Activity and Terminations

Respondent operates a cable T.V. system, receiving television signals and carrying them through coaxial cables into customers' homes. The signals are received from sending stations by antennas mounted on towers and transmitted from these via microwave to the receiving center at Skeston. Respondent serves and services customers within various communities located within a radius of 35 miles of Skeston. There are about 9,000 subscribers. As of November 5, 1979, Respondent employed 15 employees as installers, technicians, and construction employees to service its customers.

On November 1, Gregory Rick, an installer employed by Respondent since the previous September, visited the Teamsters hall in Cap Girardeau where he obtained approximately 15 union authorization cards for distribution among Respondent's employees. The following day, a Friday, Rick began distributing the cards. He met William Lambert at the corner of West Malone and School Streets in Skeston at 3 p.m. and gave him one of the cards. Lambert, an employee of Respondent, took the card and left, placing it on the dash board of his truck. At the same time and place Rick gave Kevin Goetz and Jeff Aldridge,⁵ both fellow employees, union cards which they signed and returned to him.

About 5 p.m. the same afternoon, Rick, while in Respondent's parking lot, signed a union card himself. No one else was present when he did so. Meanwhile, Lambert had also returned to Respondent's place of business, checked in, and then went out to the parking lot where his truck was parked. He got into his truck, signed the card, then walked over to where Rick was standing in the parking lot. He handed Rick his signed union card. W. C. Eckles, another employee, returned from the field about this time and joined the group which by this time

consisted of Rick, Lambert, and Goetz. The four employees, in a group, were standing around while Rick explained how he was trying to get a union representative to come out and speak to them. At one point, while these four employees were so engaged, Tom Albertson, Respondent's manager came out the back door, appearing as though he were merely finishing off and discarding a cigarette he was smoking. He came within a short distance⁶ of the group,⁷ looked at them, then discarding his cigarette he reentered the building without saying anything to them.

On the following Monday, November 5, at 8:15 a.m., Rick gave Eckles a union authorization card which he took, signed, and dated while in the rear of Respondent's building. At the same time Rick, while in Respondent's parking lot, also gave employee Howard Banks a union authorization card. Banks took the card to his truck cab, filled it out, and handed it back to Rick. About the same time, and again in the back parking lot of Respondent's place of business, Rick offered a union card to employee Keith Williams who took it and went to get gas. When Rick, 10 minutes later, joined Williams at the gas pump, Williams returned the sign authorization card to Rick.

At 8 or 8:15 a.m. on November 8, 1979, a meeting of employees was called in Albertson's office, at which time Albertson introduced Phil Edwards, the newly hired head technician. Edwards then addressed the employees.⁸

He announced that he was going to be the new head technician. He stated that he intended to make some changes in operations and that he was going to watch the employees' work, try to improve it, and "crack down" on anything they did wrong. To improve their work he stated that he would send them to school. He promised to try to obtain insurance for them and better pay as well. In the meantime, he said he would have individual meetings with each employee later that day; to receive any suggestions, gripes, or complaints they might have; and to review their work for purposes of evaluation and the granting of wage increases.

After the meeting with the employees, about 10 a.m., Eckles was called back into Albertson's office where both Albertson and Edwards were present. When Eckles first entered Albertson told him that he had no complaints about his work, that his work was satisfactory. At this point Edwards spoke. He told Eckles that the Company was in financial trouble, that he would have to cut

⁶ Estimated by various witnesses as being anywhere from less than 10 feet to between 30 and 50 feet.

⁷ The four employees participating in this discussion about the Union are the same four employees named in the complaint as discriminatees. Nevertheless, none of the four could testify with certainty as to whether or not Albertson heard their discussion, saw any union cards, or even that union cards were being handed out or collected precisely at the time Albertson was in the vicinity. He did, according to Eckles, look directly at the group. Albertson was not called to testify to deny that he saw the individuals talking or handling union cards, or to deny that he heard what was being discussed. The inference remains unchallenged by Respondent and I find that Albertson did, at least, observe the four union adherents grouped together in the parking lot when he came out of the office.

⁸ The content of the meeting appears as described in the credited testimony of employees Rick, Lambert, Goetz, and Eckles.

³ The sum herein reflects the stipulation of the parties proffered and received at hearing.

⁴ *General Telephone and Electronics Communications, Inc.*, 160 NLRB 1192 (1966); *Century Telephone Enterprises, Inc., and Century Telephone Midwest, Inc., its Wholly-Owned Subsidiary*, 220 NLRB 1378 (1975).

⁵ Rick testified uncertainly at one point that he gave Lambert and Aldridge their authorization cards in Respondent's parking lot at 5 p.m. Lambert testified credibly to the version which appears in the text. Aldridge did not testify. Where Rick's and Lambert's testimony are inconsistent, I credit Lambert's and find Rick's innocuously in error.

back on some of the workers, and that Eckles was one of the employees that would have to be laid off. Eckles, angrily asked why, after he was just told that his work was satisfactory, Albertson should then turn around and lay him off. Albertson, not answering Eckles' question, offered to recommend him to any new employer if he so desired. Eckles, after turning in his key, left.

About 10:30 a.m., Rick was called into Albertson's office where Edwards was also present. Edwards advised Rick that though Respondent liked his work, nevertheless, the payroll had to be cut which meant that he was being laid off. Edwards offered to give Rick a good recommendation. Rick turned to Albertson and asked him if he was firing him. Albertson nodded his head affirmatively.

At 11 a.m. Goetz was called into Albertson's office. Again, only Albertson and Edwards were present. Edwards asked Goetz if he had any gripes or complaints. Goetz replied negatively, adding that there was nothing major. Edwards pursued the questioning by asking Goetz if he had any complaints with management.⁹ Again, Goetz replied that there was nothing major, just a "little bit of a problem" with the secretaries who would eventually come around because they were new. Edwards then stated that the Company was having financial problems and would have to let a few people go. He added that Goetz happened to be one of them. Goetz replied incredulously: "You're having financial problems, and you think you're supposed to let the one with the most experience go first?" Edwards did not answer Goetz' question but only repeated that the Company was having financial problems and would therefore have to let him go. Goetz started to walk out. Then Albertson said that if Goetz needed a recommendation, the Company would give him a good one. Goetz left.

The day after Eckles, Rick, and Goetz were terminated, about 9 a.m.,¹⁰ Lambert was called into Albertson's office where, once again, Albertson and Edwards were present. Edwards advised Lambert that he had been brought in to make changes, that he had 6 months to show a profit or else the Company would be sold. He said that there had to be some layoffs for economic reasons and that Lambert would be one of them. Lambert was told that if he wanted to draw unemployment he could do so; and if he chose to seek other employment, the Company would give him a good recommendation. Lambert was assured that he was not being laid off because of the quality of his work. He was informed that he might be called back in a couple of weeks or a month.¹¹

General Counsel contends that the four alleged discriminatees were terminated because of their union activi-

ties. In support of this contention General Counsel listed a large number of reasons in his brief, all of which I find to be well founded both with regard to the facts of the case and the applicable law. In particular, the facts outlined earlier in this decision support General Counsel's contention concerning the timing of the discharges occurring at the outset of the union organizing campaign, immediately after the discharges signed union cards. The record also supports General Counsel insofar as it reflects that the discharges were abrupt, there being no previous warning to any of the discharges that termination was under consideration. I find that these circumstances, i.e., the abrupt discharge of union adherents immediately after they signed union authorization cards makes it incumbent on Respondent to produce some explanation as to why these employees were discharged, if, in fact, the terminations were not as a result of their union activity. In the absence of any credible explanation, it is well established that a cause and effect relationship is inferred between the union activity of the discharged employees and the abrupt and immediate discharge thereafter of the employees so engaged. This inferred relationship is, under the law, considered *prima facie* evidence of a violation even in the absence of direct proof of company knowledge of the union activity.¹² The Respondent's defenses, that is, its explanations as to the grounds for the discharges of these employees, occurring as they did immediately after the employees engaged in protected activity, must be subjected to close scrutiny and analysis to determine whether the proffered reasons are credible or mere pretexts designed to cover up a discriminatorily motivated and violative act. In this respect too, the evidentiary indicia of violations based on the lack of credible explanations or defenses, as listed in General Counsel's brief, also appear to be well founded on fact and logic, as the following analysis indicates.

B. Defenses

Respondent proffers a twofold basis for the termination of the four discharges. First, it argues that the terminations were made necessary by the financial condition of the Company which, purportedly had not made a profit in the past 8 or 9 years. Secondly, the four particular employees who were picked for discharge were chosen rather than other employees because these four

⁹ It is quite apparent that Goetz was called into Albertson's office to be told that he was being terminated. In light of this fact, any gripes or complaints which he might have had would appear to be immaterial. Yet, Edwards pursued the interrogation. If, as I shall eventually find to be the case, Edwards and Albertson were aware of Goetz' involvement in the union drive; they would likely be curious to know why. This would account for the interrogation.

¹⁰ The description of this incident is in accordance with the credited testimony of William Lambert. Where Edwards' testimony differs, the latter is not credited.

¹¹ Lambert was never recalled.

¹² *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959); *Don Swart Trucking Co., Inc.*, 154 NLRB 1345 (1965), *affd.* 359 F.2d 428 (4th Cir. 1966). Although I shall rely on the small plant theory to draw the inference of company knowledge in the instant case, there is also circumstantial evidence as to how such knowledge could have been obtained. Thus, four employees—Rick, Lambert, Goetz, and Aldridge—all met on November 2 on a street corner where union cards were distributed. Word of this meeting could have gotten back to Albertson. Two hours later in the day, after Albertson had time to gain information concerning the earlier meeting he noticed three of the four, Rick, Lambert, and Goetz, again gathering in the parking lot, this time joined by Eckles. From the testimony of these four witnesses it is clear that Albertson saw the gathering. If he had just been made aware of the earlier union organizing meeting in which three of the four had participated, it would be safe for him to assume that this meeting was a continuation of the union activity begun just a short while before. Thus, the termination of these four employees, and no others, based on Albertson's observation can easily be explained. I am not relying on this theory alone, however, since company knowledge in a small plant may generally be inferred.

were either deficient in their work or were simply no longer needed.

C. The Economic Defense

According to Phil Edwards, Respondent's only witness, he received a telephone call during the summer of 1979 from Fred Reynolds while Edwards was working for another cable company. Reynolds identified himself as Respondent's owner, stated that he was having some problems and asked if Edwards would agree to help him. The record is unclear as to whether or not there was any commitment made at the time concerning the employment of Edwards by Respondent. About a month later, however, Reynolds called Edwards a second time. He advised him that he owned several systems in southeast Missouri, was still having problems and wanted to know if Edwards could help him get these systems into a position whereby they would be profitable to him.¹³ He complained that to that time the systems had not yielded a profit¹⁴ and that he was losing anywhere from \$2,000 to \$12,000 a month on the operations.¹⁵ Reynolds requested Edwards to come to the Sikeston area, evaluate his systems, and advise him whether or not he thought they could be made into a productive venture. He added that he was also having trouble at the time with his chief engineer. Edwards agreed to come to Sikeston.

On or about October 5, 6, or 7, according to Edwards, he visited Sikeston and talked with Tom Albertson. Albertson showed Edwards the plant and the two discussed the financial problems of the Company, its personnel, and the future plans of the Company. Edwards concluded from his inspection that the plant looked good since it had new equipment, that the construction looked fairly decent, but that there were some apparent problems due to a lack of proper maintenance of the system. The problems with maintenance, according to Edwards, were detected by his checking the records of outage calls, the amount of overtime the men had been putting in, the types of repairs that had been made, and also the physical appearance of the plant. With regard to personnel, Edwards testified that he talked to Albertson who told him his opinion of each field employee.¹⁶

¹³ The content of these phone calls appears as described in Edwards' testimony. Reynolds did not testify.

¹⁴ Since Reynolds did not take the stand to testify concerning the profitability of Respondent's operations in the summer of 1979; since Edwards was not even employed by Respondent at the time and was therefore in no position to judge as to the financial position of the Company; and since no documentation was offered to substantiate the claim, I find Edwards' testimony on the subject virtually worthless.

¹⁵ Neither Reynolds, Respondent's owner, nor his bookkeeper, accountant, or any other officer employed by Respondent during the relevant period took the stand to offer testimony concerning Respondent's financial condition. No one from Respondent subjected himself to cross-examination on that subject. Similarly, no records were introduced to substantiate Respondent's contention that the Company was suffering financial difficulties during the summer of 1979 and for the 8 or 9 years prior thereto.

¹⁶ The description of Edwards' purported visit to the Sikeston location on October 5, 6, or 7 is based solely on Edwards' unsupported testimony. No employee testified to having seen Edwards at Sikeston on any of these dates and Albertson did not take the stand.

Sometime after Edwards' visit to Sikeston, he advised Reynolds of his findings.¹⁷ According to Edwards, he was advised by Reynolds that he would be placed in charge of the operation. He was told that it was necessary to quickly effect a turnabout in the cash flow and to make recommendations and corrections to accomplish this. To meet Reynolds' requirements, Edwards testified, he quickly reviewed the preceding months' records in order to get a general idea if Albertson's feelings and opinions about the personnel were justified. According to Edwards, the records justified Albertson's opinions—namely, that some of the employees were good workers whereas others were "slow to respond to orders . . . failing to carry out instructions thoroughly as issued by management" and by "the girls that were passing the orders on to the men." Supposedly, by virtue of this review of the records, Edwards hoped to effect a quick turnabout in the cash flow by terminating less able employees.

On October 25, 2-1/2 to 3 weeks after Edwards' visit to Sikeston, a meeting of Respondent's employees was called by management. Reynolds was present as was Albertson. Edwards was not. Reynolds addressed those who were present. He told the assembled employees that it took a tremendous amount of money to run the Company, that equipment was expensive, and that there had been no return on his investment for 7 or 8 years. He then said that there had been some talk concerning the Company having financial problems but that he had just deposited a large sum of money in the bank, and he wished to assure them that the Company was not in financial trouble. Reynolds went on to explain that the problem that had arisen concerning payroll checks was merely a matter of the Company having failed to transfer its money from one account to another, thus causing a shortage in the payroll account.¹⁸ Reynolds stated further that the Company could get all of the money it needed and that the employees should not be worried.¹⁹ Albertson also addressed those present, and in a less reassuring speech advised them, according to Rick, that although at the moment the Company was in bad shape and had loans that had to be paid back, if the employees worked together, there was plenty of money, and things would get better.

Between October 25, when Reynolds assured Respondent's employees that the Company had "plenty of money," and November 8, when the four employees

¹⁷ Edwards gave the only testimony concerning these communications between himself and Reynolds. The latter, as noted earlier, was never called to testify and no memorandum or other written records were offered to support Edwards' testimony.

¹⁸ Goetz testified that he thought that some employees had tried to cash their paychecks but that they had bounced.

¹⁹ Reynolds' speech appears as testified to by Goetz, Eckles, Lambert, and Rick. Under cross-examination, counsel for Respondent, by means of leading questions, made Rick appear to agree that Reynolds was saying that Respondent did not have enough money to meet the payroll. This is not how Rick testified on direct examination, and I do not believe it is what he meant to say. Where Rick's direct testimony is at variance with his testimony on cross-examination, I rely on his direct testimony, particularly in the absence of any testimony by either Reynolds or Albertson and in light of the corroborative nature of the testimony of General Counsel's other witnesses.

were terminated by Edwards because the Company was "in financial trouble," nothing occurred, insofar as the record reveals, to reflect that the Company's economic status had changed. The record reflects only that Edwards was hired on November 5 and fired four employees on November 8. If, in fact, Respondent was in financial difficulty it would have been a simple matter to prove it at the hearing. Reynolds, the owner, could have testified concerning such problems. He did not. The company bookkeeper, accountant, or some other member of management could have testified on the matter. No such witnesses were produced. Company records could have been offered to show precisely Respondent's financial condition. They were not. The only evidence proffered by Respondent to prove that the four discharges were based on financial considerations was the bald statement of a man hired 3 days before the terminations that he fired the four union activists because he had been told by the owner "to quickly effect a turnaround in the cash flow of the operation." I do not believe that Respondent seriously set out to prove a credible defense based on economic or financial considerations and I do not find that it did so. To believe that a company would hire a totally new, untried managerial employee and permit him "to make recommendations and corrections" within 3 days of his hire "as he sees fit" to effect such a "turnaround in the cash flow"²⁰ by decimating the ranks of its employees is patently absurd. And to proffer such a theory naked of supportive evidence indicates to me that no such evidence exists.

D. Individual Deficiencies and Lack of Work

Since I have found that Respondent offered no credible evidence to support its contention that the discharges were motivated by economic considerations, and this contention is the foundation of Respondent's defense, I find Respondent without any logical explanation for its actions. In such a case, where there is no other logical explanation for a sudden discharge of union activists in a timely fashion immediately following their union activity, an inference is warranted that the union activity was the real reason for the discharges.²¹

Although Respondent has ineffectively relied on an unproven adverse financial condition to support its primary position that four of its employees were discharged for cause; it contends secondarily that these particular four employees were chosen for discharge from its entire complement of outside plant personnel for special reasons peculiar to each of the four. An analysis of these reasons, far from supporting Respondent's defense, further detracts from it by indicating clearly the lengths to which Respondent is willing to go to fabricate pretextual bases to support its claim that the discharges were for cause.

W. C. Eckles was first employed by Respondent in August 1979. His job consisted primarily of connecting television cables to private homes. The actual installation

sometimes required Eckles to climb ladders or use clamps to climb utility poles. This he did and testified credibly that the heights and the climbing were not, in any way, limiting factors in his properly performing his duties as assigned. At the end of each workday, Eckles and the other outside plant personnel were required to fill out forms containing information concerning the work performed that day. These forms as well as the individual timecards, both signed by each employee, became part of the records kept by the Company. Eckles credibly testified that he completed each day's assignment as ordered most of the time, except when customers were not at home, in which case he would return and perform the required work when it was possible to do so, usually the following day. He also testified that for as long as he was employed by Respondent, there was always work for him to do.

When Eckles was terminated on August 8 he was, as noted earlier, advised that there were no complaints about his work, that his work was satisfactory. He was told that he was being laid off because the Company was in financial trouble. When Eckles asked why he was being laid off immediately after being told that his work was satisfactory, he received no reply but merely an offer by Albertson to give him a good recommendation. Thus, Respondent freely admitted to Eckles at the time of his discharge that his work was satisfactory and put forth as the sole reason for his termination the Company's adverse financial situation; a reason I have found spurious judging from Respondent's totally inadequate defense on that specious ground. At the time of Eckles' discharge, therefore, I find that Respondent offered no credible basis for the discharge whatsoever, even though requested to do so by Eckles. The failure of an employer to give a reason for termination when requested to do so has long been considered substantial evidence of violative motivation under circumstances similar to the instant case.²²

At the hearing, as distinguished from the time of discharge, Respondent, through Edwards, contended that the decision to terminate Eckles and the other discharges was based not only on financial considerations but on deficiencies in Eckles' work. This abrupt switch from a purely economic reason for termination proffered to Eckles at the time of his discharge to reasons concerning deficiencies in his work as contended at hearing, in my estimation certainly calls into question Respondent's credibility, particularly since no deficiencies were brought up to Eckles at the time of his discharge and he had been at that time, in fact, complimented for his work and told that it was satisfactory.

Edwards testified that his decision to terminate Eckles and the other three employees because of deficiencies in their work was based, in part, on his own past experience and his observation of their work during the first 2 days of his employment. During these first 2 days, according to Edwards, he observed the way that the employees conducted themselves in speaking with other employees in the office, how they responded to calls, and

²⁰ Three weeks after the termination of the four union activists Respondent hired two new employees at wages substantially higher than those of anyone discharged. This hardly supports Respondent's "turnaround in cash flow" contention.

²¹ *Don Swart Trucking Co., Inc.*, *supra*.

²² *Graham Ford, Inc.*, 172 NLRB 313 (1968).

their attitude toward their work. He also testified that his decision to terminate the four was also based, in part, on the individual interviews he held with them the day they were discharged. He admitted that the termination of each of the four employees was probably a total surprise to them since termination of any employees had not been discussed with them before, not even at the general meeting held that morning. The abruptness of the terminations without warning was necessitated, according to Edwards, by Reynolds' directive to quickly improve the financial condition of the Company. I find Edwards' reasons for the abruptness of the discharges singularly unconvincing. In my opinion, it is far more likely that the suddenness of the discharges was occasioned by the union activity of the discharges which had occurred during the previous few days than it was for the reasons proffered by Edwards, supposedly based on a conversation between Reynolds and Edwards which took place the preceding summer. Nor does Edwards' testimony that he discussed the employees with Albertson, their immediate supervisor up until that time, during the early morning of November 6 add to his credibility inasmuch as Edwards admitted that he spent a total of only 20 minutes discussing Respondent's entire complement of outside employees,²³ 13 in number, including their work records, before deciding which of them would be discharged. In this brief time, according to Edwards, Albertson advised him which of these employees were good employees and which were poor employees. Edwards testified that all employees were under consideration for termination, not just the four who eventually were chosen for discharge.

Edwards' testimony concerning his decision to choose four employees from 13 or 15 for discharge on the basis of a 20-minute discussion²⁴ with their previous supervi-

²³ Although Edwards admitted to discussing 13 employees, according to the records there were 15 such employees to consider including 2 who were engaged in piecework installation.

²⁴ Edwards also testified to having discussed personnel with Albertson during his weekend visit to Sikeston about October 6:

Q. What did you do, if anything, in an effort to initiate a planned improvement after you came aboard?

A. I did a general inspection of the plant to see what the worst problems were that I would have to deal with there. Then, the next thing was to take a look at the personnel that I could expect to see working for me in the field.

* * * * *

I understood that I would be in charge.

* * * * *

I talked to Tom Albertson and he told me his opinion of each person that was in the field.

* * * * *

Q. And that was when you were first in Sikeston?

A. Yes, sir.

Q. Reviewing the personnel with Albertson?

A. Yes . . . Not specifically reviewing the personnel, it was generally to look over the plant and area, you know the entire operation.

As to the extent that Edwards and Albertson discussed personnel during Edwards' October 6 visit, I find Edwards' testimony confusing. I conclude that any such discussion was negligible and superficial at best. Since Albertson did not take the stand to testify as to the content of these purported discussions, there is some doubt in my mind that they ever took place at all.

not only incredible but patently absurd. It would, in my opinion, take far more than 20 minutes to discuss and give thorough consideration to which 4 of 13 employees should be terminated and which kept, even if the one making the decision had been in a position to observe the work of the individuals under consideration for a period of years, which Edwards was not. Twenty minutes, on the other hand, would be plenty of time to be advised that certain individuals had been involved in union activity and to decide to immediately get rid of them.

Edwards testified that Eckles was chosen for "lay off" due to the recommendation of Albertson who advised him that his recommendation was based on two factors. First, that Eckles was one of the younger employees in seniority and secondly, that Eckles was not proficient in the use of climbing gear.

With regard to the matter of seniority, the record indicates that there were at least five employees with less seniority than Eckles, two of whom were only part-timers. Moreover, the record also indicates that 3 weeks after Eckles' discharge two new employees were hired. Also of considerable interest is the fact that when Respondent terminated Eckles it at the same time terminated Goetz, its oldest employee. I conclude that seniority had nothing to do with Eckles' discharge. Respondent's use of this clearly pretextual reason for Eckles discharge warrants the conclusion that it proffered its specious reason in order to mask its true purpose and that it would not have utilized pretext unless its real reason for discharging Eckles was discriminatory in nature.

With regard to Edwards' contention that Eckles was terminated, in part, because he was not proficient in the use of climbing gear, he explained that proficiency in its use is very important to the safety of an employee inasmuch as although ladders and aerial lift trucks are often used, climbing gear is required where the poles are inaccessible. Be that as it may, when Edwards was asked if he had ever observed Eckles at work or had discussed this alleged deficiency with him, he admitted that he had done neither. Thus, whatever information Edwards came by during his 2 days as chief technician with Respondent, this information was based solely on whatever Albertson told him, for he admittedly had no firsthand information himself. Yet, Respondent curiously chose not to call Albertson to testify as to his knowledge of Eckles' alleged deficiencies in the area of climbing poles. When Edwards was asked about Albertson's knowledge of Eckles' work and about his, Albertson's, knowledge of installation work, he testified that he could not answer questions concerning how often Albertson checked employees work because he was not there to see. He admitted that to his knowledge, neither Albertson nor anyone else ever told Eckles that he was inadequate in performing his climbing function. But this may have been because Albertson had had no installation experience himself before coming to work for Respondent.²⁵ There is, therefore, some question, even on the basis of Edwards' clearly pro-Respondent hearsay testimony, whether Albertson was in a position to evaluate Eckles'

²⁵ Edwards so testified.

work. Respondent's failure to call Albertson to testify on this subject adds considerable additional doubt on this score.

Inasmuch as Respondent chose not to produce any witnesses competent to testify concerning Eckles' work, I will rely heavily on the credited testimony of Eckles, in order to arrive at a decision concerning Eckles' abilities. According to Eckles, in his work for Respondent he frequently had to use both ladders and climbing gear. During his tenure with Respondent he at no time received any discipline, criticism, or adverse remarks with regard to his climbing ability or any other phase of his work from Albertson. Indeed, Eckles testified credibly that Albertson had never seen him work. He received no criticism from Edwards, whom he had never even seen prior to the date of his discharge, and none from any other member of management. On the day of his discharge Albertson told Eckles that he had no complaints with his work. Therefore, from the totality of evidence submitted on the subject, I must necessarily conclude that Respondent's contention that it fired Eckles because of work deficiencies is clearly pretext. There being no other logical explanation as to why Respondent should endeavor to create the false impression it did, I find that it did so in order to cover up the discriminatory motivation which it sought to hide; namely, the termination of Eckles because of his union activities. I find Respondent, thus, in violation of Section 8(a)(1) and (3) of the Act with regard to his discharge.

According to Edwards, the decision to terminate Gregory Rick was made jointly by Albertson and himself after a discussion in which Albertson told Edwards that he had had problems with the way Rick talked to the customers and to the girls in the office, which Albertson characterized as uncouth. Edwards testified that Albertson "had problems with him interfering with directives from management to different people in the field" and that Rick complained a lot about the quality of the system and about management directives or the lack of them.

As far as his own investigation of Rick's work is concerned, Edwards stated that he only went out to investigate his work in the field on one occasion and that was on November 6. On that trip, according to Edwards, he drove to the community of East Prairie where Rick and Aldridge had been assigned the duty of checking amplifier levels on the trunkline. While in the vicinity for about 2 hours and 15 minutes, Edwards noticed that the truck in which Rick and Aldridge were traveling left town about 11:30 a.m. and did not return until 1:15 p.m.,²⁶ at which time Edwards could not find either Rick or Aldridge. Edwards testified that the absence of Rick from the area for about 1-1/2 hours was one reason he decided to terminate him.

Despite the adverse comments reported to Edwards by Albertson about Rick; and despite his discovery that Rick and Aldridge had unaccountably been out of East Prairie for about 1-1/2 hours, a fact which allegedly bothered Edwards, he never spoke to Rick about any of

these matters prior to the latter's discharge. Likewise, there is no indication in the record that Albertson ever discussed these matters with Rick.

Since Edwards' knowledge of Albertson's complaints about Rick's work was purely hearsay or extremely limited and Respondent offered no firsthand evidence to support these alleged deficiencies, either by calling Albertson to testify or by any other means, I find Respondent's evidence on these matters decidedly lacking in quality. Therefore, any firsthand evidence proffered on the same subjects through General Counsel's witnesses will be credited over that of Edwards. Similarly, inasmuch as Edwards testified that he never questioned either Rick or Aldridge about where they were or what they were doing between 11:15 a.m. and 1 p.m., on November 6, and discharged Rick, in part, for this reason while doing absolutely nothing to Aldridge²⁷ for the same offense, I find no basis for crediting Edwards' contention that this event was a consideration in his determination to discharge Rick. In short, Respondent's decision to rely on Edwards' testimony concerning the reasons for the discharge of Rick is at best questionable. Therefore, where Ricks' testimony is at variance with that of Edwards, I credit Rick.

According to Rick, he began working for Respondent in September 1979 as an installer at the wage scale of \$3 per hour. In mid-October he received a wage increase to \$3.25 per hour. I find that the wage increase indicates, there being no evidence to the contrary, that as of mid-October, Respondent was, at the very least, satisfied with Rick's work. In fact, Rick credibly testified that his work was praised.

In late October, Rick had a problem with management concerning his refusal to make collections from customers. The way he explained the problem was that when he was sent out to make collections, he visited several homes and was told flatout by the customers that they would not pay and that he should "just go away." Rick became angry about this, called Albertson and told him what was occurring. Albertson called Rick back to the office to talk the matter over. Once there, Rick told Albertson that he could not do collection work because the system was not providing decent pictures for the customers in East Prairie due to technical problems and the Company was not doing anything to remedy the situation. Rick told Albertson that he would no longer attempt to collect payment for service to these complaining customers until the problem was remedied. The record is not that clear as to what Albertson replied to Rick since Respondent chose not to call him as a witness, but the end result was, according to Rick that Albertson would send a technician to East Prairie to remedy the customers' complaints, that Rick would thereafter collect payments, and that Rick would be on probation for 1 week during which he was expected to "straighten out."

Respondent contends that among the reasons for Rick's termination was his interference with directives

²⁶ Later in his testimony, Edwards stated that he could not testify that they were gone more than 1-1/2 hours.

²⁷ Aldridge is still working for Respondent and never received any disciplinary warning nor even notice of displeasure from Edwards due to his absence with Rick from East Prairie for 1-1/2 hours on November 6.

from management to employees in the field and his complaining about the quality of the system. Respondent did not expound greatly on these matters at the hearing and did not see fit to file a brief. I must therefore assume, without actually knowing, that these contentions are based on the incident described immediately above. Thus, by "interfering with directives from management to employees in the field," I conclude that Respondent means that Rick refused to collect from disgruntled customers. There is nothing else in the record, as far as I can see, to which Respondent possibly could be referring. As far as Rick's "complaining about the quality of the system," again I must assume that Respondent is referring to Rick's agreement with customers that they were receiving poor quality pictures.

Inasmuch as Rick's refusal to make collections occurred 2 weeks or more prior to his discharge and he was given a week's probation to "straighten out," and inasmuch as he was still employed 2 weeks later, I conclude that Rick successfully served out his probationary²⁸ period and that Respondent was satisfied with Rick's work during the 2 weeks following the incident which resulted in his being placed on probation. Since the incident was not brought up at the time of Rick's discharge but Rick, on the contrary, was told at the time by Albertson that he liked his work, I conclude that these reasons, belatedly offered by Respondent for Rick's termination, are mere afterthoughts, pretextually proposed by Respondent in order to conceal its discriminatorily motivated real reason for the discharge; namely, Rick's union activities.

It would appear then that all of the hearsay, secondary information type reasons offered by Respondent for terminating Rick can safely be dismissed. The alleged interference with directives from management to employees in the field and the alleged complaints about the quality of the system, I have found to be pretextual. The charges that Rick did not speak properly to customers and was uncouth in his dealings with the girls in the office were in no way supported by testimony or by other evidence. No customers or fellow employees were called to testify concerning these purported failings and Edwards did not even testify secondarily to any specifics concerning these matters. I find Respondent's reasons for terminating Rick insofar as they concern reports from Albertson to Edwards singularly lacking in credibility. There remains only for consideration Edwards' claim that one afternoon shortly before Rick's discharge, Edwards did not see him in East Prairie where he was supposed to be working.

According to Rick, Jeff Aldridge, a technician trainee, was sent to East Prairie²⁹ to accompany him in order to iron out some of the problems that Rick had reported to Albertson some 2 weeks before. Rick credibly testified that although he usually took one-half of an hour for lunch, his lunch hour could be taken at any time. He

denied taking more than one-half of an hour for lunch during the 2-week period immediately preceding his discharge. To reiterate, since Edwards admitted that he never questioned either Rick or Aldridge about their supposed absence from the East Prairie site, and since Aldridge was never disciplined or even reprimanded for his absence for 1-1/2 hours on November 6, I conclude in accordance with Rick's testimony that he did not take a long lunch hour on November 6 but may well have been engaged in company operations in the vicinity of East Prairie outside Edwards' view. Edwards' failure to question either Aldridge or Rick about their whereabouts on that date convinces me that their absence was of little significance to Respondent at the time and had nothing to do with the decision to terminate Rick.

Kevin G. Goetz³⁰ was hired by Respondent on December 28, 1977, as an installer. In March or April 1979, Goetz became a technician and was thereafter responsible for the more technical work done by Respondent. In addition to doing his own work, Goetz, because of his greater technical knowledge, was required to look into and solve problems which were too difficult for the installers to understand or perform. Though Goetz' starting pay was only \$3 per hour, at the time of his discharge he was earning \$4.65 per hour, a wage significantly higher than that of any other employee. I consider Goetz' higher wage to be evidence that his services were valued to a greater degree than those of the other employees and that Respondent had confidence in his technical ability. According to Goetz' credited testimony, Respondent's Manager, Thomas Albertson, told him that he "had high plans" for him. This statement was later backed up when just about 3 weeks before his discharge Goetz received a 60-cent-per-hour wage increase,³¹ the last of a series of raises indicating satisfaction with his work. In fact, when he received this raise he was told that he was doing a good job. Additionally, Goetz credibly testified that during his entire period of employment with Respondent, he never received any written or oral warnings and certainly no prior indication from Albertson that he was going to be fired.

Edwards testified that it was he who advised Goetz that he was being terminated. He fired Goetz, he stated, because Albertson reported to him that Goetz had been instructed to assume the duties of lead technician in order to see that the other employees were carrying out their work and to take on the more troublesome problems, but that the other men could not effectively carry out their duties because Goetz was not paying attention to his work the way he should. When Edwards was asked whether Albertson detailed to him his reasons for concluding that Goetz was not performing his duties the way he should, Edwards recounted a story purportedly told him by Albertson wherein a customer reported that one of Respondent's servicemen,³² while servicing his

²⁸ There is some testimony that Rick may have been suspended without pay for a week, but this testimony is unclear; since Respondent could have offered enlightening testimony of its own but chose not to do so, or could have submitted records to clarify the subject but did not do so, I shall resolve the problem as indicated in the text.

²⁹ As of this date, according to Rick, he was unaware that Edwards was in East Prairie or had even been hired by Respondent.

³⁰ Although Respondent's counsel implied that Goetz was a supervisor, I find the record as a whole does not support this contention.

³¹ Goetz was told at the time that he would probably get an additional 15-cent-per-hour increase later since the raise was supposed to have been 75 cents per hour.

³² Edwards implied that the serviceman was Goetz but no one was called to specifically identify him.

with working for the Company, was making more money outside doing other work and would soon be leaving the employment of the Company.

Once again Respondent failed to support Edwards' testimony by calling Albertson to verify what he purportedly told Edwards. Though Edwards named the customer, one Roland Harper, that individual was not called to give firsthand information concerning when and where this discussion took place. Clearly, by using only Edwards to testify concerning the hearsay testimony, Respondent pointedly kept off the stand any witness who might be susceptible to cross-examination. The inference to be drawn is that if these firsthand witnesses were called they would not support Edwards' testimony. I find Edwards' self-serving testimony on this subject unworthy of crediting.

Granting, *arguendo*, that Goetz may have mentioned to a customer that he was dissatisfied working for Respondent, was making more money elsewhere and would soon be leaving Respondent's employ, I cannot conceive that Respondent's most logical reaction would be immediately to fire Goetz, its most experienced technician and oldest, most valued employee, judging from his wage scale. Moreover, if Albertson took great umbrage at what Goetz supposedly said to the customer, why did he not mention it to him? He never did so, either when it supposedly occurred or at the time Goetz was terminated. Neither did Edwards.

If Goetz had made any such statement to a customer, the part about making more money outside of Respondent's employ was probably a reference to his selling Shakelee products in conjunction with his wife's business, on his own time. Goetz admitted on the stand that he did in fact sell this merchandise, but insisted that he only did it on his own time and never carried the merchandise around with him when on duty working for Respondent. Similarly, he denied planning to quit Respondent's employ in order to go into full-time permanent selling of Shakelee products and likewise denied telling anyone that he had such plans. He also denied knowing a Roland Harper.

Despite Edwards' testimony to the contrary, I do not believe that Goetz' occasional selling of Shakelee products, or any statement he might have made about quitting Respondent and doing it full-time, had anything to do with his discharge. That Respondent would contend that it discharged him for such a superficial reason and then fail to even attempt to prove it through available witnesses smacks of pretext and I so find.

Edwards testified that he did not rely solely on what Albertson told him in deciding to terminate Goetz. He stated that the first day that he was on the job, November 6,³³ he instructed Goetz to perform some duties at the headend, the receiver side, of the Sikeston system. Goetz replied that he knew what the problem was and would take care of it. According to Edwards, the discus-

sion then turned to an item called a demodulator, a piece of equipment that is used in the cable system. Edwards testified that Goetz was thoroughly unfamiliar with the term and thus gave Edwards the impression that he did not know very much about the technical details of the system since a demodulator is a basic item used in the headend, and Goetz was the individual who had to determine whether or not the demodulator was functioning properly. Edwards testified that he was disturbed over Goetz' unfamiliarity with the term even though there was nothing wrong with the demodulator at the time and it was functioning properly. He stated that this failure on Goetz' part to recognize the proper name for the demodulator was a second reason that he determined to fire Goetz. He testified also that when he informed Goetz of the proper name for the demodulator Goetz thanked him for the information.³⁴ Edwards admitted that he did not tell Goetz anything at the time about firing him. Nor did he mention that subject at any time prior to the actual discharge.

I consider this reason for discharging Goetz patently absurd. Here is an employer with 15 employees, installers, technicians, and construction men. One employee, Goetz, is the oldest employee in terms of experience and the highest paid employee. He is the one full-time, most knowledgeable technician; the individual on whom all of the installers depend for instructions when they are faced with a problem of a technical nature which they are unable to solve; the technician who trained or was in the process of training the only other employee classified as a technician. This most important employee, Edwards testified, was terminated because he did not know the proper name for a particular piece of equipment. Clearly, whether or not Goetz knew the term for demodulator he had been the one individual, more than any other then employed, who was responsible for maintaining the system. How can Respondent credibly contend that it terminated Goetz because of his lack of knowledge when by the weight of evidence he was clearly the most knowledgeable of all its employees. I reject Respondent's contention that it terminated Goetz because of his failure to recognize the term "demodulator."

Finally, Edwards testified that the third reason for terminating Goetz was his failure to properly splice a cable in or near the town of New Madrid. According to Edwards, the splicing had been done by Goetz prior to Edwards' being hired. When Edwards checked out the splicing job he found that Goetz had neglected to use expansion loops when splicing the aluminum cable. As Edwards explained, expansion loops are necessary to prevent the cable from withdrawing from the connectors during cold weather. According to Edwards, he was told that Goetz had done that job. He did not, however, testify as to who told him this although it may fairly be assumed that once again it was Albertson. Once again it must be noted that Albertson was not called to testify to support Edwards' testimony and to subject himself to proper cross-examination. Again Respondent relies total-

³³ Goetz testified on the contrary, that he had never seen Edwards prior to November 7. I credit Goetz since although Edwards frequently mentioned the November 6 date, he also stated several times that he had been employed by Respondent only 2 days when he fired the four employees. I believe that everything that occurred around the time of the discharge occurred on November 7 and 8.

³⁴ Subsequently, Edwards testified that when he told Goetz the name of the demodulator, he got very upset with him and ran out the back door.

ly on Edwards' hearsay testimony as to what he was told. Just as with the other matters herein related, Edwards did not discuss with Goetz the way he would prefer the splicing to be done. Nor did he advise Goetz, when he first discovered the alleged faulty splice that he intended to fire him because of it. And as noted earlier, when on November 8 Edwards fired Goetz, he mentioned nothing about the splice.

Under the circumstances of the instant case—Goetz' experience and position with Respondent; his fine work record as reflected by his wage scale and wage increases; Respondent's failure to ever advise him of its dissatisfaction with his splicing, either at the time of its discovery or at the time of Goetz' discharge; and Respondent's total failure to present its evidence through knowledgeable witnesses, I conclude that Goetz' alleged improper splicing is purely a pretext and that General Counsel's *prima facie* case with regard to the discriminatorily motivated discharge of Goetz remains intact.

William Lambert was hired by Respondent on April 1, 1979, and employed as a construction worker, running a machine that buried underground cable. Lambert's employment record was a good one. From time to time he was told by Albertson that he was doing a good job. He was never criticized or disciplined in any way. At his exit interview on November 8 he was assured that he was not being laid off because of any deficiency in his work but only because of economic reasons. He was also told that he might be called back in a couple of weeks, maybe in a month.

At the hearing Edwards testified that the decision to lay off Lambert was strictly his own and not based in whole or in part on any report from Albertson. As mentioned earlier, it seems odd that an individual would be authorized to terminate anyone he chose, abruptly and immediately within 2 days of his own hire.³⁵ Be that as it may, Edwards gave as his reason for terminating Lambert the fact that he had been employed placing underground cable and that due to the heavy rainy season and frozen conditions that the area was about to experience, he felt it would be necessary to stop or severely curtail this operation because when the ground gets muddy residents do not want the machinery in their yards. It was for this reason, Edwards testified, that he let Lambert go.

I find Edwards' explanation unsatisfactory. First, if the forthcoming rainy, winter season were the real reason why he decided to lay off Lambert, why did he not tell him so during the exit interview instead of talking about economic reasons. The reasons given to Lambert at the time of his discharge were completely at variance with those proffered at the hearing. Shifting defenses such as these have long been regarded as evidence of a violation and I find them to be so here. Moreover, if it were, in fact, the forthcoming expected adverse weather conditions which were the bases for Edwards' decision to lay off Lambert, then why did he tell him that he might be recalled in a couple of weeks or a month, as Lambert

credibly testified. The weather certainly was not expected to improve in December.

On the day of Lambert's discharge it had rained and the ground was wet. But this was clearly a temporary phenomenon since work of the sort that Lambert had been doing was done again thereafter. In other words, the rainy season had not yet arrived and there should have been no reason based on the weather for such an abrupt termination of Lambert who, at the time, was the only employee engaged in operating the vibrator, the machine used for burying cable.

Up until the date of his discharge Lambert had been working full time. This much was admitted by Edwards. Lambert testified that work was even picking up at the time, that although he had been working in and around Sikeston recently, he was scheduled to lay cable in the New Madrid area, some 20 miles away and would have done so on November 8 but for the rain and, of course, his sudden discharge. There were 10 cables to be laid in New Madrid and each cable would take about an hour to lay, according to the undisputed and credited testimony of Lambert. The work of laying the 10 cables plus the traveling time that it would have taken to go from Sikeston to New Madrid and back indicates that there were at least a couple of days work yet available to be done of which Lambert, himself, was aware.³⁶ There was also a small job in the Sunset area and a larger one at Matthews East in Sikeston where another 12 drop-wires had to be placed underground, according to Edwards' own admission. Since there were apparently still several days work available, at the very least, and since Lambert was the only individual at the time engaged in operating the vibrator, it seems unlikely that he should be abruptly discharged before this work was completed, particularly since there was nothing wrong with the way he had been performing this work. The abrupt discharge of Lambert, under these circumstances, I find to be evidence that Lambert was terminated for reasons other than those put forth by Respondent at the hearing.

After Lambert was discharged, Respondent did not discontinue laying cables as it would have done if, in fact, its reasons for terminating Lambert were true. Rather, it assigned Lambert's job to another employee, Undra West and gave him a helper to accomplish the work previously done by Lambert. Edwards admitted that the cable laying machine was used on two occasions after Lambert's discharge, once on the Sunset job and once on the Matthews East job, and Lambert testified that he had seen his equipment being pulled around town on the backs of trucks within a day or two after his discharge. He also saw the equipment being loaded onto the trailer at the warehouse. From the record it is quite apparent that not only was there cable work still to be performed at the time Lambert was discharged, but that work actually was performed, the weather notwithstanding. Respondent offered no explanation as to why it did not keep its most experienced vibrator operator to do this work. I find this inconsistency evidence that Re-

³⁵ Edwards had never even spoken to Lambert prior to the date he discharged him.

³⁶ Lambert had seen the order sheets for this job.

spondent's purported reason for terminating Lambert was untrue and quite transparently pretextual.

Finally, Lambert testified without contradiction that when he was first employed, Albertson assured him that he would have work for him throughout the winter months. Thereafter, although Lambert was employed almost exclusively burying cables he also did some installation work. Since Lambert testified without contradiction that cables could be laid until the ground was frozen a foot deep, there was still several weeks cable laying time yet available. Thereafter, until the spring thaw, Lambert could have been employed doing installation work such as he had already occasionally performed or, in the alternative, he could have been trained to do other more technical work. The record indicates that many if not most of Respondent's employees were young³⁷ and inexperienced³⁸ at the time they were hired and were trained to do the installation work through on the job training. Thus, when Albertson assured Lambert that he would have work for him throughout the winter it is quite conceivable that Albertson had installation work and additional on the job training in mind. In the absence of any testimony on the subject from Albertson, I am willing to credit Lambert that he was, in fact, promised work throughout the year and that despite his technical inexperience there is sufficient bases in the record to conclude that Albertson meant to keep his word. Consequently, the sudden decision to terminate Lambert on November 8 despite Albertson's earlier promise to keep him employed, I find to be further evidence that the reasons offered by Respondent concerning its discharge of Lambert were pretextual and that the real reason must lie elsewhere.

Summary

I find that Respondent violated Section 8(a)(1) and (3) of the Act when it discharged W. C. Eckles, Greg Rick, Kevin Goetz, and William Lambert because they distributed and/or signed union cards and otherwise engaged in activities protected by Section 7 of the Act. In so finding, I have relied on the following facts and legal principles:

All four employees were engaged in protected concerted, union activity; both direct and circumstantial³⁹ evidence support the conclusion that Respondent became aware of the union activity of the dischargees; the discharges occurred within just a few days of the employees' union activity during the initial stages of the union organizational drive; no previous indications or warnings were given to the dischargees that their terminations were being considered; the discharges were virtually simultaneous, abrupt, and immediate, occurring in the middle of the workweek; the reason offered to the dischargees for their termination, i.e., financial problems, was belied by statements of financial well being made

³⁷ The ages of some of the employees as of early November 1979 were: Goetz, 20; Eckles, 23; Rick, 20; Aldridge, 19; and Williams, 22.

³⁸ Goetz, the most experienced technician, had no previous experience, was trained on the job and had trained the only other technician, Jeff Aldridge, himself. He and Aldridge together handled jobs which the installers could not handle and in the process helped train them.

³⁹ *Wiese Plow, supra*.

just 2 weeks earlier; the defense that the dischargees were terminated because of financial problems was never supported by either the submission of company records or by testimony of knowledgeable company representatives; after the discharge of the four union activists, two new employees were hired at higher wage rates, thus indicating that finances were not a consideration in the decision to terminate them; after the discharge of the four union activists, Respondent determined that it needed additional help, yet never recalled any of them but instead hired new employees; at the time of the discharge no mention was made to the four union activists that their work was deficient, rather they were specifically told that the quality of their work had nothing to do with the decision to terminate them, yet at the hearing Respondent, for the first time, shifted its reasons for the termination of three of the union activists from an economic defense to a charge that their work was deficient; at the time of the discharge of the fourth union activist, William Lambert, nothing was said to him concerning the weather being a factor in Respondent's decision to terminate him, yet at the hearing Respondent, for the first time, shifted its reason for his termination from an economic defense to one wherein it was claimed that Lambert was no longer needed because the setting in of the forthcoming rainy season made Lambert expendable; Respondent insists that the decision to discharge the four union activists was made by an individual who had been employed by Respondent for only 2 days, a contention I find unworthy of crediting; Respondent inexplicably failed to produce any witnesses with firsthand knowledge of the four union activists' work, thus seriously undermining its contention that they were terminated because of deficiencies in said work; conversely, Respondent unaccountably relied solely on hearsay testimony to support its contention that there were deficiencies in the dischargees' work, thus further undermining the credibility of Respondent's defenses; and, cumulatively, Respondent failed to seriously offer a defense sufficient to rebut the *prima facie* case presented by General Counsel.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. See-Mor Cable T.V. of Sikeston, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging employees W. C. Eckles, Greg Rick, Kevin Goetz, and William Lambert, and thereafter failing and refusing to reinstate them because of their union

and other protected concerted activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that W. C. Eckles, Greg Rick, Kevin Goetz, and William Lambert were discriminatorily discharged, I shall recommend that Respondent be required to offer them full and immediate reinstatement, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁴⁰

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁴¹

The Respondent, See-Mor Cable T.V. of Sikeston, Inc., Sikeston, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees in regard to hire, tenure of employment, or

any term or condition of employment because they engage in union or other protected concerted activities.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

(a) Offer W. C. Eckles, Greg Rick, Kevin Goetz, and William Lambert immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports, and all other records necessary to analyze and determine the amount of backpay due under the terms of this Order.

(c) Post at its Sikeston, Missouri, facilities, copies of the attached notice marked "Appendix."⁴² Copies of said notice on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁴⁰ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁴¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

⁴² In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."